



Zoli Zambo
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2 January 2019

Your ref:
Our ref: **CYR1/128416/22227629**

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By Email Only

Dear Zoli

SWL – information sharing agreement

You have asked us for a short note not whether it is legally necessary or otherwise beneficial to have an information sharing agreement (ISA) in place in connection with the proposed integrated/shared records systems being proposed in South West London. We understand that some stakeholders have questioned the need to have one.

Ultimately there is no specific obligation to have an ISA but in our view it is beneficial both in terms of adhering to elements of GDPR, but more generally in relation to project governance. The most relevant legal principle is in article 26 GDPR, which states:

- 1. Where two or more controllers jointly determine the purposes and means of processing, they shall be joint controllers. They shall in a transparent manner determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information referred to in Articles 13 and 14, by means of an arrangement between them unless, and in so far as, the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject. The arrangement may designate a contact point for data subjects.*
- 2. The arrangement referred to in paragraph 1 shall duly reflect the respective roles and relationships of the joint controllers vis-à-vis the data subjects. The essence of the arrangement shall be made available to the data subject.*

Having an ISA therefore helps to discharge the broader obligations under article 26 GDPR to have in place ‘appropriate arrangements’. This is a distinct issue from the inherent lawfulness of the data sharing by virtue of the obligation to share relevant information within and between care teams for direct care purposes in s. 251B of the Health and Social Care Act 2012.

There are a number of other reasons it may be beneficial to have an agreement, which you have identified, and with which we agree:

1. It helps define the organisations responsibilities to maintain good IG and data security helping protect the organisations and particularly the GPs;
2. Should a data breach occur, it defines the organisations’ responsibilities in terms of how to respond to the incident (as well as setting measures that each participant is expected to take to avoid incidents from happening in the first place) – and can also help to manage/distribute risk in the event that it materialises, through indemnities, etc. – see our note of 11 September 2018 in this regard;
3. It helps add clarity to what is being shared, how and why and provides a resource for practices and patients to help understand these issues;
4. Sharing is going to be complex and will permit opt out of certain aspects of sharing as things move on – having an agreement provides a point of reference for this; and
5. It helps to describe a mechanism for patients to opt out of sharing should they wish to do so, which is needed as the NHS effectively has a monopoly on healthcare provision for most of the population.
6. The regulator – the Information Commissioner’s Office - recommends having in place agreements in their *Information Sharing Code of Practice* as a matter of good practice.

In other words, we do think that having an agreement is a good idea. We also have experience in working with similar proposed arrangements in other parts of London/the country, which view having an appropriate agreement as quite fundamental to the governance of their projects. In our view, it is generally advantageous to follow a similar approach to that taken by peers,

1. as this helps you to ‘sell’ the project to stakeholders as unremarkable in terms of the arrangements when compared to that which is happening elsewhere; and
2. in the event that something does go wrong/the arrangements are scrutinised, regardless of whether or not the presence or absence of an agreement is

causative, the ICO or others that are hostile to the arrangements may well be unhappy about the lack of an agreement/question the project governance as a result.

I hope the above is useful. If it is useful to discuss, please do let us know.

Many thanks for these further instructions.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'A. Latham', with a long horizontal line extending to the right.

Andrew Latham